

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 24169 of 2007(B)

ORDER IN EP 63/2006 IN OS.223/2001 MUNSIFF'S COURT - THODUPUZHA

PETITIONER:

**K.C.APPUKUTTAN, CHELATTU HOUSE,
MANAPPADY KARA, ELAPPILLY VILLAGE.**

**BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
SRI.VARGHESE PARAMBIL**

RESPONDENTS:

**K.C.MADHUKUMAR,
S/O.CHANDRASEKHARA PILLAI,
KURUMATTU HOUSE, KURUMBALAMATTOM KARA,
KARIMANNOOR VILLAGE, THODUPUZHA TALUK.**

**BY ADV. SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 24169/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE E.P. NO. 63/06 ON FILES OF THE MUNSIFF'S COURT, THODUPUZHA.

EXT.P2. COPY OF THE ATTESTED COPY OBJECTION DT. 5/10/06 FILED BY THE PETITIONER.

EXT.P3. COPY OF THE CHIEF AFFIDAVIT & CROSS EXAMINATION WITH LEGIBLE COPY.

EXT.P4. COPY OF THE ORDER OF MUNSIFF'S DT. 20/07/07.

EXT.P5. COPY OF THE LEDGER FOLIO OF THE ATTACHMENT PROCEEDINGS VIDE FILE NO. B-10/5894/98.

EXT.P6. COPY OF THE CERTIFICATE DT. 30/07/07 FROM THE ASHRAM AT ELAPPILLY.

RESPONDENT'S EXHIBITS NIL.

True copy

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M.N. KRISHNAN, J.
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W.P.C. NO. 24169 OF 2007
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Dated this the 1st day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order of the Munsiff, Thodupuzha in E.P.63/06 in O.S.223/01. The decree is for realisation of an approximate amount of Rs.30,000/-. According to the decree holder he is a specialist carpenter in making 'Ennathoni' and he is having regular income and therefore he has to be arrested in case of non-payment of the amount.

2. On the other hand, the judgment debtor would contend that he has become a monk and he has renounced all worldly enjoyments. But, unfortunately, in this case he did not appear before the Court to adduce evidence in support of his contentions. In a civil case it is the preponderance of probabilities that may decide the case and non traverse of the evidence of the decree holder may also be detrimental to the judgment debtor. If really one has become a monk and sacrificed everything in life then naturally there is some force

in the contention that he may not be having any means. Therefore, in order to facilitate both the parties to give better evidence I set aside the order of the Court below and direct the parties to appear before the Court below to give evidence in support of their respective contentions. The Court below shall give sufficient opportunity for them to adduce both oral and documentary evidence and then dispose of the matter in accordance with law. The parties are directed to appear before the Court below on 1.11.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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